



Fwd: Letter to Park City
Kevin Murray to: Mia Bearley
Cc: Kathryn Hernandez, "Kerry C. Gee"

06/09/2010 04:15 PM

From: Kevin Murray <kmurray@chapman.com>
To: Mia Bearley/R8/USEPA/US@EPA
Cc: Kathryn Hernandez/R8/USEPA/US@EPA, "Kerry C. Gee" <kcgee@unitedpark.com>

1 attachment



United Park Ltr. to Park City Planning Coommission.pdf

This was delivered to Park City in response to an agenda item scheduled tonight whereby Park City claims they have a right to dispose of 1.5 million yards at Richardson. Any questions, Kerry has answers.

regards,
Kevin

Kevin R. Murray
Chapman and Cutler LLP
Chicago Direct 312-917-7654
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kmurray@chapman.com

Begin forwarded message:



June 9, 2010

Park City Municipal Corporation
445 Marsac Avenue
P.O. Box 1480
Park City, Utah 84060
Attn: Planning Commission

Via email and hand delivery

Re: June 9, 2010 Planning Commission Work Session

Dear Planning Commission Members:

United Park City Mines Company ("United Park") appreciates the opportunity to update the Park City Planning Commission with respect to the status of matters under the Mine Soil Hazard Mitigation Plan ("MSHMP") and to address a few matters set forth in your informational Planning Commission Staff Report dated June 9, 2010 (the "Staff Report"), relating generally to the 2005 Richardson Flat Repository Memorandum of Understanding (the "MOU"). This letter is not intended to be a comprehensive update under the MSHMP or to address every point made in the Staff Report.

As documented by our previous updates and submittals relating to the MSHMP, United Park has diligently pursued the remediation of identified mine sites at Empire Pass in accordance with all applicable state and federal requirements and in accordance with a schedule of priorities established under the direction of the United States Environmental Protection Agency ("USEPA") through the watershed approach to site remediation. The results (and status) of United Park's efforts include:

- All of the sites covered by the Administrative Order on Consent for Non-Time Critical Removal Action issued by the USEPA for Empire Pass have been fully completed, and the USEPA has notified both United Park and Park City Municipal Corporation ("PCMC") of the completion of the work.
- As the City is also aware, the remediation of contaminated soils at the Montage site is presently being undertaken by the developer of that project with the approval of the USEPA and the City, and is expected to be completed in the near future.
- The subject sites have been identified and remediated in accordance with all applicable requirements, or have otherwise been addressed, as referenced in the approved Mine Soil Hazard Mitigation Plan Revised Table 1 (Amending and Supplementing the April 30, 2008 Update & Addendum to the February 2008 Update to the MSHP) approved on August 13, 2008 (the "August 2008 Table 1"). The August 2008 Table 1 is attached.

- Additionally, all known mine hazards within development areas have been identified, reclaimed and closed in accordance with applicable standards and review processes, or have otherwise been addressed, as referenced in the August 2008 Table 1.

United Park believes that all open MSHMP issues were explored and the agreed approaches to resolve the open issues were documented nearly two years ago in the August 2008 Table 1. The balance of the provisions of the April 30, 2008 Update and Addendum to the Mine Soil Hazard Mitigation Plan also remain applicable.

The interests of United Park in constructively dealing with environmental issues has extended beyond the scope of the Empire Pass developments covered by the Amended and Restated Development Agreement for Flagstaff Mountain. In furtherance of its interest in working cooperatively to address significant risks associated with historic mining activities:

- Under USEPA and UDEQ oversight, United Park has engaged in evaluating lands outside of Empire Pass in the greater Park City "watershed" area to identify sites that may require some form of action.
- United Park sought approval by the USEPA in 2004 of an order allowing United Park to receive at Richardson Flat off-site soils from the upper Silver Creek watershed, on certain conditions and subject to specific USEPA approval of such soils.
- United Park, in October of 2007, entered into a Consent Decree with the USEPA and the US Department of Justice at Richardson Flat (the "Consent Decree"), to implement a USEPA 2005 Record of Decision. United Park negotiated a provision in the Consent Decree that permits the import of contaminated soils from the greater Silver Creek watershed to Richardson Flat by third parties, subject to the prior approval of the USEPA of specific requests to import soils. The importation of off-site soil by third parties is solely within the discretion of the USEPA, and United Park is entirely subject to the regulatory control and approval rights of the USEPA. Absent the authority granted and the conditions imposed by the USEPA, United Park would have no legal right or authority to accept soils at Richardson Flat from off-site sources.
- As a further cooperative gesture and in anticipation of the 2005 Record of Decision, United Park entered into the MOU relating to the use of the Richardson Flat Repository by PCMC for certain soils generated within the City limits. As reflected in Part F to the April 2008 Update and Addendum to the Mine Soil Hazard Mitigation Plan, which is a part of the MSHMP and is attached to this letter, PCMC and United Park are well aware that any use of the Richardson Flat for the importation of off-site soils by third parties requires specific USEPA approval in each instance.
- In 2007, PCMC directly requested USEPA to approve the right of PCMC and others to deposit 101,920 cubic yards of soils from specified sources. Subsequent to receiving such approval, PCMC has directed specifically-documented soil shipments totaling 101,877 cubic yards to Richardson Flat, and United Park has processed those shipments after confirming with the USEPA that such shipments were included within the scope of the prior approval.

These bullet points are intended to emphasize United Park's ongoing commitment to cooperate with PCMC regarding the deposit of off-site soils at Richardson Flat. The foregoing also highlights the unique issues created by the regulation of the Richardson Flat repository by the USEPA. It is only by reason of such USEPA regulatory authority and the conditions imposed by the USEPA that the site is even available for use by Park City and others within the City. Otherwise, such import would be legally forbidden.

Other unique factors relating to the use of Richardson Flat as a repository for material are noted in Part F to the April 2008 Update and Addendum, including: (i) the need for USEPA prior approvals before Park City or other persons may relocate mining wastes and impacted materials to Richardson Flat, (ii) that the MOU is "always subject to the constraints imposed on Richardson Flat by the EPA," and (iii) that "formal inclusion of the MOU within the Mine Soils Hazards Mitigations Plan may be problematic in that the Richardson Flat site must be closed pursuant to the Consent Decree and Record of Decision related to Richardson Flat." Part F also states at the outset what is really the bottom-line conclusion: "United Park will comply with the MOU *to the extent allowed by EPA.*" (emphasis added)

The discussions and hearings leading to the adoption of the August 2008 Table 1 must be understood in the regulatory context of Richardson Flat. In that process, PCMC and United Park addressed in the August 2008 Table 1 the capacity issue relating to Richardson Flat in two respects — (1) it was reiterated that the "MOU and site capacity are both subject to USEPA who approves all deposits at Richardson and determines limits"; and (2) a sentence was added to the MSHMP stating that "The City *recommends* that 1.5 million cubic yards of additional capacity be reserved at Richardson Flat." (emphasis added) The City could only *recommend* a 1.5 million cubic yard capacity reservation because the USEPA has complete discretion and regulatory authority over the deposits at Richardson Flat.

As indicated by the preceding provision from the approved August 2008 Table 1, the added reference to the 1.5 million cubic yards was a *recommendation*. The July 23, 2008 Planning Commission minutes reflect that staff wanted the Planning Commission support for the inclusion of this new sentence "so the City can negotiate with the EPA if necessary". (The minutes also reflect an acknowledgement that the City had no assurance that it would actually be able to access 1.5 million cubic yards of capacity.) United Park understands that PCMC in fact has engaged in negotiations with the USEPA regarding Richardson Flat capacity in 2009 and again, as late as yesterday.

United Park appreciates the opportunity to provide this brief update. We hope you will find this information helpful in putting the current issues with respect to Richardson Flat capacity in the proper context. This update is not intended to fully cover all matters raised by the Staff Report, so we may provide supplemental information based on the discussion this evening in the Planning Commission work session.

Sincerely,



David J. Smith

PART F OF THE APRIL 2008 UPDATE AND ADDENDUM TO THE MINE SOIL HAZARD MITIGATION PLAN

Richardson MOU

	<u>Issue</u>	<u>Park City Recommendation</u>	<u>United Park Implementation</u>
F	Richardson Flat MOU	1) Amend Mine Soil Hazard Mitigation Plan to include MOU.	United Park will comply with the MOU to the extent allowed by EPA. Under the Richardson Flat Consent Decree, United Park is required to obtain EPA approval prior to allowing Park City or any other person or entity to utilize Richardson Flat for the relocation of mining wastes and impacted materials. Formal inclusion of the MOU within the Mine Soils Hazards Mitigation Plan may be problematic in that the Richardson Flat site must be closed pursuant to the Consent Decree and Record of Decision related to Richardson Flat. At the point of final remedial closure, United Park will not be able to allow mining wastes or other impacted material to be consolidated at the Richardson site.

Discussion

United Park can allow mining wastes to go into the Richardson Flat Repository until the Richardson Flat remediation project is complete and the Richardson Flat site is closed. The MOU is always subject to the constraints imposed on Richardson Flat by the EPA.

Mine Soil Hazard Mitigation Plan
Revised Table 1
(Amending and Supplementing the April 30, 2008
Update & Addendum to the February 2008 Update)

	<u>Issue</u>	
A	Remediation Parcel D-3	<ul style="list-style-type: none"> • Remediation completed by 8/31/08; Closure Report to Building Department by 9/15/08; Remediation Completion Certification filed with USEPA by 9/30/08.
	Parcel P-6 and Mezeppah Shaft	<ul style="list-style-type: none"> • Remediation and closure will occur when Site is developed. • Closure will meet DOGM standards. • Closure Certification by Professional Engineer. • United Park to provide GPS coordinates. • United Park to apply for USEPA Comfort Letter – <i>(Caveat: United Park will apply for Comfort Letter upon completion, but cannot compel USEPA to issue the Comfort Letter.)</i>
	Parcel D-10	<ul style="list-style-type: none"> • Remediation and closure will occur when Site is developed. • United Park will provide Closure Report. • United Park will provide confirmation of sampling results. • United Park will apply for USEPA Comfort Letter – <i>(Caveat: United Park will apply for Comfort Letter upon completion, but cannot compel USEPA to issue the Comfort Letter.)</i>

Mine Soil Hazard Mitigation Plan
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B	Empire Creek	<ul style="list-style-type: none"> • Third party evaluation completed by Golder Associates 6/30/08; Report and Recommendations submitted to City and United Park by 9/30/08. • Golder Report will evaluate need for additional detention basins. • Golder Report will evaluate need for installation of gabion armoring. • United Park will submit copy of USEPA Closure Report.
C	Mine Hazard Inventory / Reclamation	<ul style="list-style-type: none"> • All mine hazards in the Developable Area have been inventoried, reclaimed and closed (except the Mezeppah). • All reclamation and closure expected to comply with DOGM standards. • Closure of all mine hazards to be certified by Professional Engineer. • United Park will provide GPS coordinates for mine hazards.
D	PCB Transformers	<ul style="list-style-type: none"> • United Park will submit a transformer inventory and analytical results to the City Fire Marshall. • If PCBs are discovered, United Park will prepare a management plan for all regulated units that complies with 40 CFR 761.
E	Montage Post Closure Site Control Plan	<ul style="list-style-type: none"> • The Montage Post Closure Site Control Plan will be completed by Montage and included as addendum to the Mitigation Plan.

Mine Soil Hazard Mitigation Plan
Revised Table 1
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E	Montage Post Closure Site Control Plan (Cont.)	<ul style="list-style-type: none"> Per USEPA contracts and formal requirements, Montage has sole responsibility for site control measures under the USEPA's Lessee Agreement with Montage, the USEPA-approved Montage Work Plan and Site Control Plan, and the USEPA's Revised Action Memorandum and Administrative Order on Consent.
F	Richardson Flat MOU	<ul style="list-style-type: none"> MOU and site capacity are both subject to USEPA who approves all deposits at Richardson and determines limits. The City recommends that 1.5 million cubic yards of additional capacity be reserved at Richardson Flat.
G	Deed Restrictions	<ul style="list-style-type: none"> Montage will provide written environmental disclosures as part of the purchase contract documentation provided to all purchasers of units at the Montage.



Office of The Mayor and City Council

June 10, 2010

Administrator James B. Martin
US EPA Region 8
8EPR
1595 Wynkoop St
Denver, CO 80202-1129

VIA EMAIL

Dear Administrator -

Thank you for taking the time to meet with us Tuesday -- and on such short notice. We were very pleased that you and your team are willing to work with us regarding both the immediate and long term environmental needs of our community.

Immediate Need to Haul Soils to Repository

It is clear that you understand our urgent need to move the previously approved soils from the federally funded transit project site. Because of the Stimulus funding at risk with the four-week delay in that project, immediate resolution of that situation is critical. We very much look forward to hearing from you within the next few days on that issue. As we discussed, hauling of soils from the new water treatment plant site was scheduled to begin on June 20th. We would appreciate approval to move all or a portion of those soils to the Richardson Flat repository within the next few days. Also covered in our meeting was the Walkability projects scheduled for this summer. Those two tunnel projects will provide pedestrian access under very busy roadways. With those projects and one or two other smaller municipal projects, we would estimate the City's repository needs over the next six months to be in the 60,000 cubic yard range we discussed at the meeting. The projects are exclusively Park City Municipal projects.

Our school district is not under the authority of the municipal government; however, they are a partner organization. We do know of a Park City School District project they plan to complete this summer that is expected to generate materials that need to be hauled to Richardson Flat. Along with some other projects from private developers and potentially homeowners, we would expect these non-municipal, including the school district project, to generate an incremental 20,000 cubic yards of material for the repository. This would bring the total immediate need to 80,000 cubic yards.

Your consideration of including some or all such projects in determining a final authorization would be appreciated. As stated in the meeting, unless a different prioritization is mutually agreed to as a result of the stakeholder process described below or results from legal action with the UPCMC, Park City would commit by MOU or other written document to the finality of such capacity determination.

June 10, 2010

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A Future Repository

With regard to initiating the process of determining the need, target capacity and future location for a new repository, we are committed to working in a stakeholder process including the UPCMC to resolve this within the 6 month timeframe discussed. We will send a proposed outline, work plan and schedule to your staff by the end of the week and would like to schedule the first meeting before the end of June.

Thank you again for your time Tuesday.

Sincerely,

A handwritten signature in black ink that reads "Dana Williams". The signature is written in a cursive, flowing style.

Dana Williams
Mayor



fyi, UPCM is mentioned
Mia Bearley to: Kevin Murray
Cc: OReilly.Maureen, Kathryn Hernandez

06/16/2010 09:21 AM

From: Mia Bearley/R8/USEPA/US
To: Kevin Murray <kmurray@chapman.com>
Cc: OReilly.Maureen@epa.gov, Kathryn Hernandez/R8/USEPA/US@EPA



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